

Senate File 75 - Reprinted

SENATE FILE 75

BY REICHMAN

(As Amended and Passed by the Senate February 16, 2023)

A BILL FOR

1 An Act relating to certain health facilities including
2 ambulatory surgical centers and rural emergency hospitals,
3 including licensing requirements and fees, providing
4 penalties and making penalties applicable, providing
5 emergency rulemaking authority, and including applicability
6 and effective date provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

RURAL EMERGENCY HOSPITALS

1
2
3 Section 1. Section 135B.1, Code 2023, is amended by adding
4 the following new subsections:

5 NEW SUBSECTION. 5. "*Rural emergency hospital*" means a
6 facility that provides rural emergency hospital services in
7 the facility twenty-four hours per day, seven days per week;
8 does not provide any acute care inpatient services with the
9 exception of any distinct part of the facility licensed as a
10 skilled nursing facility providing posthospital extended care
11 services; and meets the criteria specified in section 135B.1A
12 and the federal Consolidated Appropriations Act, Pub. L. No.
13 116-260, §125.

14 NEW SUBSECTION. 6. "*Rural emergency hospital services*"
15 means the following services provided by a rural emergency
16 hospital that do not exceed an annual per patient average of
17 twenty-four hours in such a rural emergency hospital:

18 a. Emergency department services and observation care.

19 For purposes of providing emergency department services, an
20 emergency department of a rural emergency hospital shall be
21 considered staffed if a physician, advanced registered nurse
22 practitioner, or physician assistant is available to furnish
23 rural emergency hospital services in the facility twenty-four
24 hours per day.

25 b. At the election of the rural emergency hospital, with
26 respect to services furnished on an outpatient basis, other
27 medical and health services as specified in regulations adopted
28 by the United States secretary of health and human services.

29 Sec. 2. Section 135B.2, Code 2023, is amended to read as
30 follows:

31 **135B.2 Purpose.**

32 The purpose of [this chapter](#) is to provide for the
33 development, establishment and enforcement of basic standards
34 for the care and treatment of individuals in hospitals and
35 rural emergency hospitals and for the construction, maintenance

1 and operation of such hospitals, which, in the light of
2 existing knowledge, will promote safe and adequate treatment
3 of such individuals in such hospitals, in the interest of the
4 health, welfare and safety of the public.

5 Sec. 3. Section 135B.3, Code 2023, is amended to read as
6 follows:

7 **135B.3 Licensure.**

8 No person or governmental unit, acting severally or jointly
9 with any other person or governmental unit shall establish,
10 conduct or maintain a hospital or rural emergency hospital in
11 this state without a license.

12 Sec. 4. NEW SECTION. **135B.3A Rural emergency hospital**
13 **licensure.**

14 1. The department shall adopt rules pursuant to chapter
15 17A to establish minimum standards for the licensure of rural
16 emergency hospitals consistent with the federal Consolidated
17 Appropriations Act, Pub. L. No. 116-260, §125, and with
18 regulations issued by the United States secretary of health and
19 human services for rural emergency hospitals.

20 2. To be eligible for a rural emergency hospital license, a
21 facility shall have been, on or before December 27, 2020, one
22 of the following:

23 a. A licensed critical access hospital.

24 b. A general hospital with not more than fifty licensed
25 beds located in a county in a rural area as defined in section
26 1886(d)(2)(D) of the federal Social Security Act.

27 c. A general hospital with no more than fifty licensed beds
28 that is deemed as being located in a rural area pursuant to
29 section 1886(d)(8)(E) of the federal Social Security Act.

30 Sec. 5. Section 135B.4, Code 2023, is amended to read as
31 follows:

32 **135B.4 Application for license.**

33 Licenses shall be obtained from the department.

34 Applications shall be upon forms and shall contain information
35 as the department may reasonably require, which may include

1 affirmative evidence of ability to comply with reasonable
2 standards and rules prescribed under [this chapter](#). Each
3 application for license shall be accompanied by the license
4 fee, which shall be refunded to the applicant if the license
5 is denied and which shall be deposited into the state treasury
6 and credited to the general fund if the license is issued.
7 Hospitals and rural emergency hospitals having fifty beds or
8 less shall pay an initial license fee of fifteen dollars;
9 hospitals of more than fifty beds and not more than one hundred
10 beds shall pay an initial license fee of twenty-five dollars;
11 all other hospitals shall pay an initial license fee of fifty
12 dollars.

13 Sec. 6. Section 135B.5, subsection 1, Code 2023, is amended
14 to read as follows:

15 1. Upon receipt of an application for license and the
16 license fee, the department shall issue a license if the
17 applicant and hospital facilities comply with [this chapter](#),
18 chapter 135, and the rules of the department. Each licensee
19 shall receive annual reapproval upon payment of five hundred
20 dollars and upon filing of an application form which is
21 available from the department. The annual licensure fee shall
22 be dedicated to support and provide educational programs on
23 regulatory issues for hospitals and rural emergency hospitals
24 licensed under [this chapter](#). Licenses shall be either general
25 or restricted in form. Each license shall be issued only
26 for the premises and persons or governmental units named in
27 the application and is not transferable or assignable except
28 with the written approval of the department. Licenses shall
29 be posted in a conspicuous place on the licensed premises as
30 prescribed by rule of the department.

31 Sec. 7. Section 135B.5A, Code 2023, is amended to read as
32 follows:

33 **135B.5A Conversion of a ~~hospital~~ relative to certain**
34 **hospitals.**

35 1. A conversion of a long-term acute care hospital,

1 rehabilitation hospital, or psychiatric hospital as defined by
2 federal regulations to a general hospital or to a specialty
3 hospital of a different type is a permanent change in bed
4 capacity and shall require a certificate of need pursuant to
5 section 135.63.

6 2. A conversion of a critical access hospital or general
7 hospital to a rural emergency hospital shall not require a
8 certificate of need pursuant to section 135.63.

9 Sec. 8. Section 135B.7, Code 2023, is amended to read as
10 follows:

11 **135B.7 Rules and enforcement.**

12 1. a. The department, with the approval of the state
13 board of health, shall adopt rules setting out the standards
14 for the different types of hospitals and for rural emergency
15 hospitals to be licensed under [this chapter](#). The department
16 shall enforce the rules.

17 b. Rules or standards shall not be adopted or enforced
18 which would have the effect of denying a license to a hospital,
19 rural emergency hospital, or other institution required to be
20 licensed, solely by reason of the school or system of practice
21 employed or permitted to be employed by physicians in the
22 hospital, rural emergency hospital, or other institution if the
23 school or system of practice is recognized by the laws of this
24 state.

25 2. a. The rules shall state that a hospital or rural
26 emergency hospital shall not deny clinical privileges to
27 physicians and surgeons, podiatric physicians, osteopathic
28 physicians and surgeons, dentists, certified health service
29 providers in psychology, physician assistants, or advanced
30 registered nurse practitioners licensed under [chapter 148](#),
31 [148C](#), [149](#), [152](#), or [153](#), or [section 154B.7](#), solely by reason of
32 the license held by the practitioner or solely by reason of
33 the school or institution in which the practitioner received
34 medical schooling or postgraduate training if the medical
35 schooling or postgraduate training was accredited by an

1 organization recognized by the council on higher education
2 accreditation or an accrediting group recognized by the United
3 States department of education.

4 *b.* A hospital or rural emergency hospital may establish
5 procedures for interaction between a patient and a
6 practitioner. The rules shall not prohibit a hospital or
7 rural emergency hospital from limiting, restricting, or
8 revoking clinical privileges of a practitioner for violation
9 of hospital rules, regulations, or procedures established
10 under this paragraph, when applied in good faith and in a
11 nondiscriminatory manner.

12 *c.* **This subsection** shall not require a hospital or rural
13 emergency hospital to expand the ~~hospital's~~ current scope of
14 service delivery solely to offer the services of a class of
15 providers not currently providing services at the hospital
16 or rural emergency hospital. **This section** shall not be
17 construed to require a hospital or rural emergency hospital
18 to establish rules which are inconsistent with the scope of
19 practice established for licensure of practitioners to whom
20 this subsection applies.

21 *d.* **This section** shall not be construed to authorize the
22 denial of clinical privileges to a practitioner or class of
23 practitioners solely because a hospital or rural emergency
24 hospital has as employees of the hospital or rural emergency
25 hospital identically licensed practitioners providing the same
26 or similar services.

27 3. The rules shall require that a hospital or rural
28 emergency hospital establish and implement written criteria
29 for the granting of clinical privileges. The written criteria
30 shall include but are not limited to consideration of all of
31 the following:

32 *a.* The ability of an applicant for privileges to provide
33 patient care services independently and appropriately in the
34 hospital or rural emergency hospital.

35 *b.* The license held by the applicant to practice.

1 c. The training, experience, and competence of the
2 applicant.

3 d. The relationship between the applicant's request for the
4 granting of privileges and the hospital's or rural emergency
5 hospital's current scope of patient care services, as well as
6 the hospital's or rural emergency hospital's determination of
7 the necessity to grant privileges to a practitioner authorized
8 to provide comprehensive, appropriate, and cost-effective
9 services.

10 4. The department shall also adopt rules requiring
11 hospitals and rural emergency hospitals to establish and
12 implement protocols for responding to the needs of patients who
13 are victims of domestic abuse, as defined in [section 236.2](#).

14 5. The department shall also adopt rules requiring
15 hospitals and rural emergency hospitals to establish and
16 implement protocols for responding to the needs of patients who
17 are victims of elder abuse, as defined in [section 235F.1](#).

18 Sec. 9. Section 135B.7A, Code 2023, is amended to read as
19 follows:

20 **135B.7A Procedures — orders.**

21 The department shall adopt rules that require hospitals
22 and rural emergency hospitals to establish procedures for
23 authentication of all verbal orders by a practitioner within
24 a period not to exceed thirty days following a patient's
25 discharge.

26 Sec. 10. Section 135B.8, Code 2023, is amended to read as
27 follows:

28 **135B.8 Effective date of rules.**

29 Any hospital or rural emergency hospital which is in
30 operation at the time of promulgation of any applicable
31 rules or minimum standards under [this chapter](#) shall be given
32 a reasonable time, not to exceed one year from the date of
33 such promulgation, within which to comply with such rules and
34 minimum standards.

35 Sec. 11. Section 135B.9, Code 2023, is amended to read as

1 follows:

2 **135B.9 Inspections and qualifications for hospital and rural**
3 **emergency hospital inspectors — protection and advocacy agency**
4 **investigations.**

5 1. The department shall make or cause to be made inspections
6 as it deems necessary in order to determine compliance with
7 applicable rules. Hospital and rural emergency hospital
8 inspectors shall meet the following qualifications:

9 a. Be free of conflicts of interest. A hospital or rural
10 emergency hospital inspector shall not participate in an
11 inspection or complaint investigation of a hospital or rural
12 emergency hospital in which the inspector or a member of the
13 inspector's immediate family works or has worked within the
14 last two years. For purposes of this paragraph, "*immediate*
15 *family member*" means a spouse; natural or adoptive parent,
16 child, or sibling; or stepparent, stepchild, or stepsibling.

17 b. Complete a yearly conflict of interest disclosure
18 statement.

19 c. Biennially, complete a minimum of ten hours of continuing
20 education pertaining to hospital or rural emergency hospital
21 operations including but not limited to quality and process
22 improvement standards, trauma system standards, and regulatory
23 requirements.

24 2. In the state resource centers and state mental health
25 institutes operated by the department of human services, the
26 designated protection and advocacy agency as provided in
27 section 135C.2, subsection 4, shall have the authority to
28 investigate all complaints of abuse and neglect of persons
29 with developmental disabilities or mental illnesses if the
30 complaints are reported to the protection and advocacy agency
31 or if there is probable cause to believe that the abuse has
32 occurred. Such authority shall include the examination of all
33 records pertaining to the care provided to the residents and
34 contact or interview with any resident, employee, or any other
35 person who might have knowledge about the operation of the

1 institution.

2 Sec. 12. Section 135B.12, Code 2023, is amended to read as
3 follows:

4 **135B.12 Confidentiality.**

5 The department's final findings or the final survey findings
6 of the joint commission on the accreditation of health care
7 organizations or the American osteopathic association with
8 respect to compliance by a hospital or rural emergency hospital
9 with requirements for licensing or accreditation shall be made
10 available to the public in a readily available form and place.
11 Other information relating to a hospital or rural emergency
12 hospital obtained by the department which does not constitute
13 the department's findings from an inspection of the hospital
14 or rural emergency hospital or the final survey findings of
15 the joint commission on the accreditation of health care
16 organizations or the American osteopathic association shall
17 not be made available to the public, except in proceedings
18 involving the denial, suspension, or revocation of a license
19 under [this chapter](#). The name of a person who files a complaint
20 with the department shall remain confidential and shall not
21 be subject to discovery, subpoena, or other means of legal
22 compulsion for its release to a person other than department
23 employees or agents involved in the investigation of the
24 complaint.

25 Sec. 13. Section 135B.14, Code 2023, is amended to read as
26 follows:

27 **135B.14 Judicial review.**

28 Judicial review of the action of the department may be sought
29 in accordance with [chapter 17A](#). Notwithstanding the terms of
30 chapter 17A, the Iowa administrative procedure Act, petitions
31 for judicial review may be filed in the district court of the
32 county in which the hospital or rural emergency hospital is
33 located or to be located, and the status quo of the petitioner
34 or licensee shall be preserved pending final disposition of the
35 matter in the courts.

1 Sec. 14. Section 135B.15, Code 2023, is amended to read as
2 follows:

3 **135B.15 Penalties.**

4 Any person establishing, conducting, managing, or operating
5 any hospital or rural emergency hospital without a license
6 shall be guilty of a serious misdemeanor, and each day of
7 continuing violation after conviction shall be considered a
8 separate offense.

9 Sec. 15. Section 135B.16, Code 2023, is amended to read as
10 follows:

11 **135B.16 Injunction.**

12 Notwithstanding the existence or pursuit of any other
13 remedy, the department may, in the manner provided by law,
14 maintain an action in the name of the state for injunction
15 or other process against any person or governmental unit to
16 restrain or prevent the establishment, conduct, management or
17 operation of a hospital or rural emergency hospital without a
18 license.

19 Sec. 16. Section 135B.20, subsection 3, Code 2023, is
20 amended to read as follows:

21 3. "*Hospital*" ~~shall mean~~ means all hospitals and rural
22 emergency hospitals licensed under this chapter.

23 Sec. 17. Section 135B.33, subsection 1, unnumbered
24 paragraph 1, Code 2023, is amended to read as follows:

25 Subject to availability of funds, the Iowa department of
26 public health shall provide technical planning assistance to
27 local boards of health and hospital or rural emergency hospital
28 governing boards to ensure access to ~~hospital~~ such services in
29 rural areas. The department shall encourage the local boards
30 of health and hospital or rural emergency hospital governing
31 boards to adopt a long-term community health services and
32 developmental plan including the following:

33 Sec. 18. Section 135B.34, subsection 7, Code 2023, is
34 amended to read as follows:

35 7. For the purposes of this section, ~~"comprehensive~~

1 ~~preliminary background check~~:

2 a. "Comprehensive preliminary background check" means the
3 same as defined in [section 135C.1](#).

4 b. "Hospital" means a hospital or rural emergency hospital
5 licensed under this chapter.

6 Sec. 19. EMERGENCY RULEMAKING AUTHORITY. The department
7 shall adopt emergency rules within six months of the effective
8 date of this Act under section 17A.4, subsection 3, and section
9 17A.5, subsection 2, paragraph "b", to implement the provisions
10 of this division of this Act and the rules shall be effective
11 immediately upon filing unless a later date is specified in the
12 rules. Any rules adopted in accordance with this section shall
13 also be published as a notice of intended action as provided
14 in section 17A.4.

15 Sec. 20. APPLICABILITY. This division of this Act applies
16 to a facility, or due to change in ownership, a successor
17 facility, that was, on or before December 27, 2020, a general
18 hospital with no more than fifty licensed beds, located in a
19 county in a rural area as specified in section 135B.3A, as
20 enacted in this division of this Act, with a population between
21 thirty thousand and thirty-five thousand according to the 2020
22 federal decennial census, operating under a valid certificate
23 of need on and prior to September 1, 2022. Notwithstanding
24 any provision to the contrary, and in accordance with section
25 135B.5A, as amended in this division of this Act, the reopening
26 of a general hospital by a successor facility as specified
27 under this section and subsequent conversion to a rural
28 emergency hospital under this division of this Act, shall not
29 be subject to certificate of need requirements pursuant to
30 section 135.63.

31 Sec. 21. EFFECTIVE DATE. This division of this Act, being
32 deemed of immediate importance, takes effect upon enactment.

33 DIVISION II

34 AMBULATORY SURGICAL CENTERS

35 Sec. 22. NEW SECTION. 135R.1 Definitions.

1 As used in this chapter, unless the context otherwise
2 requires:

3 1. "*Ambulatory surgical center*" means a distinct facility
4 that operates exclusively for the purpose of providing surgical
5 services to patients not requiring hospitalization and in which
6 the expected duration of services does not exceed twenty-four
7 hours following an admission. "*Ambulatory surgical center*"
8 includes a facility certified or seeking certification as an
9 ambulatory surgical center under the federal Medicare program
10 or under the medical assistance program established pursuant
11 to chapter 249A. "*Ambulatory surgical center*" does not include
12 the individual or group practice office of a private physician,
13 podiatrist, or dentist who there engages in the lawful practice
14 of surgery, or the portion of a licensed hospital designated
15 for outpatient surgical treatment.

16 2. "*Department*" means the department of inspections and
17 appeals.

18 Sec. 23. NEW SECTION. 135R.2 **Licensure.**

19 A person, acting severally or jointly with any other person,
20 shall not establish, operate, or maintain an ambulatory
21 surgical center in this state without obtaining a license as
22 provided under this chapter.

23 Sec. 24. NEW SECTION. 135R.3 **Application for license —**
24 **fee.**

25 1. An applicant for an ambulatory surgical center license
26 shall submit an application to the department. Applications
27 shall be upon such forms and shall include such information
28 as the department may reasonably require, which may include
29 affirmative evidence of the ability to comply with reasonable
30 rules and standards prescribed under this chapter.

31 2. An application for an initial license for an ambulatory
32 surgical center shall be accompanied by a fee of fifty dollars.

33 3. The fees collected under this section shall be considered
34 repayment receipts as defined in section 8.2 and shall be used
35 by the department to administer this chapter.

1 **Sec. 25. NEW SECTION. 135R.4 Rules.**

2 1. The department, with the advice and approval of the state
3 board of health, shall adopt rules specifying the standards for
4 ambulatory surgical centers to be licensed under this chapter.
5 The rules shall be consistent with and shall not exceed the
6 requirements of this chapter and the conditions for coverage in
7 the federal Medicare program for ambulatory surgical centers
8 under 42 C.F.R. pt. 416.

9 2. The department shall adopt rules as the department deems
10 necessary to administer the provisions of this chapter relating
11 to the issuance, renewal, denial, suspension, and revocation
12 of a license to establish, operate, and maintain an ambulatory
13 surgical center.

14 3. An ambulatory surgical center which is in operation at
15 the time of adoption of any applicable rules or standards under
16 this chapter shall be given a reasonable time, not to exceed
17 one year from the date of adoption, within which to comply with
18 such rules and standards.

19 4. The department shall enforce the rules.

20 **Sec. 26. NEW SECTION. 135R.5 Inspections or investigations.**

21 1. The department shall make or cause to be made inspections
22 or investigations of ambulatory surgical centers to determine
23 compliance with this chapter and applicable rules and
24 standards. The department shall perform inspections on a
25 schedule that is of the same frequency required for inspections
26 of Medicare-certified ambulatory surgical centers.

27 2. The department shall recognize, in lieu of its own
28 licensure inspection, the comparable inspection and inspection
29 findings of a Medicare conditions for coverage survey completed
30 by the department or an accrediting organization with deeming
31 authority authorized by the centers for Medicare and Medicaid
32 services of the United States department of health and human
33 services.

34 3. A department inspector shall not participate in an
35 inspection or investigation of an ambulatory surgical center in

1 which the inspector or a member of the inspector's immediate
 2 family works or has worked within the last two years or in
 3 which the inspector or the inspector's immediate family has
 4 a financial ownership interest. For the purposes of this
 5 section, "*immediate family member*" means a spouse, natural or
 6 adoptive parent or grandparent, child, grandchild, sibling,
 7 stepparent, stepchild, or stepsibling.

8 Sec. 27. NEW SECTION. 135R.6 Confidentiality.

9 The department's final findings with respect to compliance
 10 by an ambulatory surgical center with requirements for
 11 licensing shall be made available to the public in a readily
 12 available form and place. Other information relating to
 13 an ambulatory surgical center obtained by the department
 14 which does not constitute the department's findings from an
 15 inspection of the ambulatory surgical center shall not be made
 16 available to the public, except in proceedings involving the
 17 denial, suspension, or revocation of a license under this
 18 chapter. The name of a person who files a complaint with the
 19 department shall remain confidential and shall not be subject
 20 to discovery, subpoena, or other means of legal compulsion for
 21 its release to a person other than department employees or
 22 agents involved in the investigation of the complaint.

23 Sec. 28. NEW SECTION. 135R.7 Injunction.

24 Notwithstanding the existence or pursuit of any other
 25 remedy, the department may, in the manner provided by law,
 26 maintain an action in the name of the state for injunction
 27 or other process against any person to restrain or prevent
 28 the establishment, operation, or maintenance of an ambulatory
 29 surgical center without a license.

30 Sec. 29. NEW SECTION. 135R.8 Judicial review.

31 Judicial review of an action of the department may be sought
 32 in accordance with chapter 17A. Notwithstanding the provisions
 33 of chapter 17A, petitions for judicial review may be filed
 34 in the district court of the county in which the ambulatory
 35 surgical center is located or is to be located and the status

1 quo of the petitioner or licensee shall be preserved pending
2 final disposition of the judicial review matter.

3 Sec. 30. NEW SECTION. 135R.9 Penalties.

4 Any person establishing, operating, or maintaining any
5 ambulatory surgical center without a license commits a serious
6 misdemeanor, and each day of continuing violation after
7 conviction shall be considered a separate offense.

8 Sec. 31. Section 135.11, Code 2023, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 29. Adopt rules requiring ambulatory
11 surgical centers to report quality data to the department
12 of health and human services that is consistent with the
13 data required to be reported to the centers for Medicare and
14 Medicaid services of the United States department of health and
15 human services as authorized by the Medicare Improvements and
16 Extension Act of 2006 under Tit. I of the Tax Relief and Health
17 Care Act of 2006, Pub. L. No. 109-432, and the regulations
18 adopted under such Acts. Notwithstanding any provision of
19 law to the contrary, nothing in this subsection shall require
20 an ambulatory surgical center to provide health data to the
21 department of health and human services or any other public
22 or private entity that is in addition to, different than,
23 or exceeds the quality data required to be reported to the
24 centers for Medicare and Medicaid services of the United States
25 department of health and human services.

26 Sec. 32. Section 135.61, Code 2023, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 1A. "*Ambulatory surgical center*" means
29 ambulatory surgical center as defined in section 135R.1.

30 Sec. 33. Section 135.61, subsection 14, paragraph d, Code
31 2023, is amended to read as follows:

32 *d.* An ~~outpatient~~ ambulatory surgical facility center.

33 Sec. 34. Section 135.61, subsection 21, Code 2023, is
34 amended by striking the subsection.